

Legal Assistance Resource Center

❖ of Connecticut, Inc. ❖

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H.B. 5489 -- Nuisance abatement

Judiciary Committee public hearing -- March 19, 2012

Testimony of Raphael L. Podolsky

Recommended Committee action: NO ACTION ON THE BILL
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This bill proposes to expand the existing Nuisance Abatement Act, which allows prosecutors to bring actions to abate certain types of nuisances that lead to serious neighborhood blight. We believe that the existing law provides prosecutors with adequate weapons and that the proposed changes risk imposing unreasonable hardship on both landlords and tenants, including tenants who have no connection whatsoever to the source of the problem that triggers the Nuisance Abatement Act.

The Nuisance Abatement Act is an extremely powerful law. It not only provides for abatement orders but can result in the appointment of a receiver to take over the building. It applies broadly to all buildings -- residential and commercial, single-family and multi-family. It does not require any evidence that anyone has been convicted of a crime at the building. It instead creates a rebuttable presumption of public nuisance upon proof by clear and convincing evidence of three instances within a year of the issuance of arrest warrants or the making of arrests for certain offenses that suggest a pattern of criminal activity. The arrests or arrest warrants must be either for building-related quality-of-life issues that blight neighborhoods, such as prostitution, obscene performances, gambling, illegal drug and alcohol sales, motor vehicle "chop shops," or dangerous fire safety violations, or for serious criminal offenses, such as murder, rape, assault, and incitement to riot.

The changes proposed by H.B. 5489 include:

- Adding arrests for breach of the peace, sale of alcohol to a minor or a drunk person, and violence of municipal ordinances concerning excessive noise, public drinking, overcrowding, adult-oriented businesses, or massage parlors to the list of arrests that will trigger the act;
- Lowering the standard of proof to preponderance of the evidence;
- Making the rebuttable presumption of public nuisance irrebuttable; and
- Adding forfeiture of the property to the list of remedies.

Forfeiture is a particularly radical remedy, because it takes the property away from the landlord. It especially impacts innocent tenants, because, unlike receiverships under the existing statute, it is likely to lead to closing of the building. In addition, H.B. 5489 allows forfeiture for minor violations like excessive noise and vague, catch-all violations like breach of the peace. This pushes the statute beyond what is reasonable.

